

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

\* Case No. 23-CR-433 (EK)

\*

\* Brooklyn, New York  
\* January 22, 2024

\*

v.

\*

BRADEN JOHN KARONY and  
THOMAS SMITH,

\*

\*

Defendants.

\*

\*

\* \* \* \* \*

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE  
BEFORE THE HONORABLE ERIC R. KOMITEE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:

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For the Defendant,  
Braden Karony:

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For the Defendant,  
Thomas Smith:

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Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

1 (Proceedings commenced at 11:00 a.m.)

2 THE CLERK: Criminal cause for status conference,  
3 docket no. 23-CR-433, USA vs. Karony, et al. Counsel, please  
4 state your appearances for the record, beginning with the  
5 government.

6 MR. ENRIGHT: Good morning, Your Honor. John  
7 Enright for the United States.

8 MR. SCHUMAN: Good morning, Your Honor. For Mr.  
9 Karony, Adam and Emma Spiro from Petrillo Klein and Boxer

10 THE COURT: Good morning.

11 MS. WOZENCROFT: Good morning. Kathryn Wozencroft,  
12 Federal Defenders, and I'm here with Mr. Smith.

13 THE COURT: Good morning to all the lawyers and Mr.  
14 Karony and Mr. Smith, good morning to you both as well.

15                   We are here, as you know, for a status conference  
16                   in this case, I think the first one at which both defendants  
17                   are physically present, at least with me. So, welcome.

Let me just pull up my agenda here.

19 (Pause.)

20 THE COURT: Okay. So I think my agenda for today  
21 is -- I know we have protective order. A protective order  
22 proposed by the government. I want to talk about that a  
23 little bit.

24 And then assuming we can get that straightened out  
25 such that we have a sense of when it is that the parties will

1 begin exchanging discovery, it may make sense to talk about  
2 when we -- when it will make sense to set a briefing schedule  
3 on pretrial motions.

4 Let's start with the protective order. And this is  
5 just going to take a minute to sync, but has the -- what is  
6 the basis for the protective order?

7 MR. ENRIGHT: So Your Honor has entered a  
8 protective order that the government has entered into with  
9 Mr. Karony.

10 THE COURT: Okay.

11 MR. ENRIGHT: The government has drafted a  
12 proposed protective order to Mr. Smith. Defense counsel and  
13 I have discussed that and last week defense counsel sent over  
14 some proposed edits. We just briefly discussed them prior to  
15 Your Honor taking the bench.

16 The government's expectation is to be able to  
17 accept some of those edits, to return that draft protective  
18 order to defense counsel, and then what I suspect is to  
19 present to Your Honor a protective order in near term this  
20 week that the parties may not have agreement on all terms.  
21 Perhaps we will, but assuming we don't, what we would propose  
22 to Your Honor is something substantially similar to what Mr.  
23 Karony has signed, or his counsel has signed.

24 THE COURT: What is the basis for the protective  
25 order?

1                   MR. ENRIGHT:   The basis of the protective order --  
2                   there are a couple of categories of information that would  
3                   require protection.

4                   As a general matters, Your Honor, there is PII,  
5                   personally identifiable information of third parties, as well  
6                   as the defendants themselves. And these come up in  
7                   categories of documents like bank records, digital asset  
8                   exchange records, some PII, for example, in email search  
9                   warrant returns, et cetera.

10                  The protective order sets out -- or the proposed  
11                  protective order and the existing protective order, vis-a-vis  
12                  Mr. Karony, sets out different types of treatment with  
13                  respect to different categories of information, allowing for  
14                  the government to designate certain categories of information  
15                  as either sensitive or attorneys eyes only.

16                  We would also expect to be producing -- we will be  
17                  producing records that would identify investors, victims of  
18                  Safe Moon.

19                  So PII victim information. I think those jump out  
20                  as the two primary categories of information that would  
21                  require certain protections, Your Honor.

22                  THE COURT:  Is it clear that documents that might  
23                  identify the victims of financial crimes are appropriately  
24                  made the subject of protective orders as a matter of law?

25                  MR. ENRIGHT:  Your Honor, I can say that certainly

1       my practice and my understanding of (indiscernible) to  
2       resolve this practice is to protect by way of a protective  
3       order information concerning victims of financial crimes.

4                 I cannot represent to Your Honor what the state of  
5       Second Circuit case law is, candidly, with respect to that  
6       designation.

7                 I, of course, would be happy to do that and to  
8       inform Your Honor by letter or otherwise.

9                 THE COURT: Yes, I come back from time to time to a  
10      published order from Judge Karas in the Southern District  
11      dated 2013, *United States vs. Smith*, in which he ultimately  
12      enters what he calls a blanket protective order, which I  
13      think means it covers everything that the government is  
14      turning over in discovery.

15                 But along the way to that he says that the  
16      interests of third parties, at least in that case, did not  
17      provide good cause for the protective order and the only  
18      legally adequate basis that he saw was the need to protect  
19      the integrity of an ongoing criminal investigation.

20                 So two questions on the protective order, and I'm  
21      happy to revisit this with Mr. Karony, if necessary, also.

22                 The questions are is there a valid legal basis for  
23      invoking -- for the protective order in the first place and  
24      B, is the order tailored to that legitimate legal need such  
25      that if we're saying personal identifying information is the

1 basis for the order but then the order applies to every  
2 document being exchanged in discovery, there's a mismatch  
3 there.

4 So I'd like to get this right. This is a recurring  
5 issue that I see and if and when the parties -- so if the  
6 parties come to an agreement that obviously is relevant,  
7 although not dispositive. I think there was an agreement in  
8 the *Smith* case as well.

9 But if and when the language of what you're going  
10 to propose has settled, send me not only the proposed order,  
11 please, but also an articulated basis for it.

12 MR. ENRIGHT: Of course, Your Honor.

13 I would just add, because you mentioned it in  
14 summarizing Judge Karas' opinion, the government's  
15 investigation is ongoing. I failed to mention that. I bring  
16 that to the court's attention just so that you know.

17 THE COURT: Thank you.

18 All right. SO assume that we lock down the  
19 protective order in the next week or so. What does the  
20 government anticipate by way of discovery and next steps?

21 So the government has produced some discovery to  
22 date, Your Honor. Since we were last before Your Honor we  
23 have been collecting and having processed for a production  
24 that we expect to be able to make imminently this week,  
25 assuming protective order issues are ironed out.

1                   And I can give you a general sense of what that  
2 discovery will include in terms of size and categories of  
3 discovery and what would be left.

4                   As we represented to Your Honor at our last  
5 conference, one source of data that the government is  
6 producing in discovery is data obtained by search warrant  
7 from a social media platform. In general that social media  
8 platform allows for private messaging. Private messaging  
9 that the defendants engaged in has been produced.

10                  That social media platform also has --

11                  THE COURT: You've already produced --

12                  MR. ENRIGHT: Already produced, Your Honor.

13                  THE COURT: What remains from that social media  
14 platform, and it is sizeable, is essentially a server in  
15 which really anyone in the public, largely investors, victims  
16 of the Safe Moon schemes, could post on and communicate with  
17 each other. That data --

18                  THE COURT: Is there a reason you don't want to  
19 name the social media platform?

20                  MR. ENRIGHT: It's Discord, Your Honor.

21                  THE COURT: Okay.

22                  MR. ENRIGHT: The data that we will be producing  
23 from that server totals approximately a little bit less than  
24 500 gigabytes or half a terabyte of data. So that's one  
25 block or one tranche.

1                   The second tranche is approximately 60 grand jury  
2 subpoena returns, a production of records received from the  
3 Securities and Exchange Commission that they collected in  
4 their parallel investigation. That second tranche of data  
5 sums to approximately two gigabytes of data.

6                   So, again, short of 500 gigabytes for the Discord  
7 server, approximately two gigabytes of data for the grand  
8 jury subpoena returns and SEC documents.

9                   THE COURT: How many pages in a terabyte?

10                  MR. ENRIGHT: I feel like I'd be taking perhaps an  
11 educated guess but a guess nonetheless, Your Honor. I would  
12 have to say it's at least tens of thousands of pages per  
13 terabyte.

14                  I will say that with respect to the Discord server,  
15 Your Honor, that's in spreadsheet form. So one, as I  
16 understand it, could have literally one Excel spreadsheet  
17 with either ten rows of data or hundreds of thousands of rows  
18 of data. We're obviously here talking about the later.  
19 Hundreds of thousands of rows of data in that Excel  
20 spreadsheet.

21                  And then with respect to the grand jury subpoena  
22 returns, I don't know -- you know, I would also think that  
23 size relative to page count depends on the file type, whether  
24 it's a PDF or a JPEG, et cetera. I just don't know, Your  
25 Honor.

1                   I'm confident to say that we are talking about tens  
2                   of thousands of pages, at least.

3                   THE COURT: Okay. I am sensitive, obviously, to  
4                   the complexity of the discovery materials in this case. I  
5                   expect that the exchange of discovery will work as  
6                   efficiently as possible, but I want the parties to be  
7                   proactive, to the maximum extent possible, about making that  
8                   happen.

9                   And so try to anticipate questions and qualms from  
10                  defense counsel. Are there compatibility issues, you know,  
11                  such that the format in which the discovery is being produced  
12                  is something the defense will need specialized software to  
13                  review and if so, work with them to make sure they know what  
14                  they need to know and can get started on whatever process as  
15                  quickly as possible.

16                  MR. ENRIGHT: And I can say on that front, Your  
17                  Honor, the production to date, as I understand it, and the  
18                  productions to come, are produced with load files, which  
19                  allow for the loading of the data into a reviewing platform,  
20                  that in turn allow for text searching, et cetera.

21                  So, for instance, Your Honor, this isn't a case --  
22                  THE COURT: What would an example of the platform  
23                  be?

24                  MR. ENRIGHT: Relativity.

25                  THE COURT: Relativity. Is that industry standard

1 or is that one of many?

2 MR. ENRIGHT: That's my understanding, Your Honor.

3 THE COURT: Okay.

4 MR. ENRIGHT: So to your point, yes, of course, we  
5 will work with defense counsel to make or to present the  
6 data, to produce the data in the most kind of digestible form  
7 as possible.

8 By producing this data with load files that allow  
9 for the loading on a relatively reviewing platform, that is,  
10 in my experience, Your Honor, the most digestible form in  
11 which we can produce this data.

12 THE COURT: Okay. And you said it was your  
13 intention to produce what you understand to be everything in  
14 the SEC's possession relative to this case?

15 MR. ENRIGHT: No, just one production, Your Honor.  
16 Or sorry. This next production will include data received  
17 from the SEC.

18 THE COURT: But is that everything they have or you  
19 don't know?

20 MR. ENRIGHT: I don't believe it is everything.  
21 What I will say to Your Honor is that if anything missing --  
22 anything not included in this next production -- sorry. Let  
23 me put this a different way.

24 Any remaining data from the SEC will effectively be  
25 dwarfed by the amount of data, the grand jury's speed or

1           returns, the Discord server return.

2           THE COURT: That's fine. I'm not so much interested  
3           in the relative split between the SEC data you're producing  
4           and the SEC data you're not, so much as the possibility that  
5           something in the SEC's possession the defense comes to  
6           believe at some point constitutes *Brady* or *Giglio* material,  
7           and for whatever reason those documents fell into the  
8           category of SEC materials not produced to the defense here.

9           And so needless to say you will do everything  
10          legally required to satisfy yourselves that that risk has  
11          been managed appropriately.

12          MR. ENRIGHT: Understood and yes, we will do that,  
13          Your Honor.

14          THE COURT: Okay. What is the government proposing  
15          in terms of next steps?

16          MR. ENRIGHT: Once the protective order vis-a-vis  
17          the defendant Mr. Smith is ironed out, as I said, we'll be  
18          producing this discovery that we've been discussing.

19          THE COURT: I mean next steps in court. Do you  
20          have a date for a status conference or --

21          MR. ENRIGHT: I don't have a date. I would suggest  
22          30 or 60 days is fine for the government, Your Honor. I don't  
23          know how much time defense counsel will want, just given the  
24          size of the discovery that's coming down the pike.

25          THE COURT: Okay. All right. Mr. Schuman?

1                   MR. SCHUMAN: Good morning, Your Honor.

2                   THE COURT: Good morning.

3                   MR. SCHUMAN: I'd like to raise two points, Your  
4                   Honor.

5                   One, Mr. Karony, obviously has not obtained bail  
6                   yet from the court.

7                   As you may recall when we were last before you on  
8                   December 6th there had been an application before Magistrate  
9                   Judge Cho on a proposed bail package that was denied without  
10                  prejudice. There had been a prior history, including an  
11                  appearance before Your Honor.

12                  On Friday we identified a number of co-signers and  
13                  collateral for a new, robust proposed package to the  
14                  government that I understand the government is evaluating in  
15                  the coming days in anticipation of an application by Mr.  
16                  Karony for bail, whether by agreement with the government or  
17                  otherwise.

18                  And so I'd inquire would Your Honor like us to  
19                  apply at that time to a magistrate judge again?

20                  THE COURT: Yes.

21                  MR. SCHUMAN: And second, I wanted to inform the  
22                  court that my firm will be applying to the court, pursuant to  
23                  the local rules, to withdraw as counsel to Mr. Karony due to  
24                  a lack of funds. Mr. Karony initially was to be indemnified  
25                  by his employer, Safe Moon, which ultimately filed for

1                   bankruptcy.

2                   There had been an initial retainer which was  
3                   exhausted some weeks ago. There had been a sale of property  
4                   by Mr. Karony, a home, and the proceeds of that were seized  
5                   by the government. So those also were unavailable to pay for  
6                   legal fees.

7                   So at this juncture my firm will be makinf the  
8                   submission to the court and we've guided Mr. Karony to apply  
9                   for the appointment of CJA counsel.

10                  THE COURT: Okay. So you'll be submitting a letter  
11                  to that effect.

12                  MR. SCHUMAN: Yes. Given the timing we thought it  
13                  appropriate to attend today's conference.

14                  THE COURT: Okay.

15                  MR. SCHUMAN: Also we've put together the bail  
16                  package for the government just on Friday, so we wanted to  
17                  notify the court in this conference, but we'll be submitting  
18                  the letter either later today or tomorrow.

19                  THE COURT: Okay. All right. Ms. Wozencroft?

20                  MS. WOZENCROFT: Good morning, Your Honor.

21                  THE COURT: Good morning.

22                  MS. WOZENCROFT: If the court will entertain it, I  
23                  just would like to speak about the protective order briefly  
24                  and some of the concerns I see arising.

25                  THE COURT: Sure.

1                   MS. WOZENCROFT: Generally speaking -- and  
2                   obviously the court has highlighted this morning some review  
3                   -- it sounds like both parties need to review some of the law  
4                   related to personal information in the -- with regard to  
5                   financial crimes.

6                   Putting that aside though the protective order that  
7                   has been provided by the government includes provisions for  
8                   both attorney possession only and attorney's eyes only,  
9                   neither of which on principle we have an objection to. But  
10                  as to the substance we do.

11                  I can't -- I don't foresee and the government  
12                  hasn't been able to provide any material in this case which  
13                  would be appropriate for attorney's eyes only. And so that  
14                  is our objection to that provision.

15                  With regard to attorney possession only the  
16                  government has sort of just gone through in detail the  
17                  extensive materials we're getting.

18                  And I can also -- I would just highlight for the  
19                  court that the first -- I'm new to this case. Mr. Dahlberg  
20                  is now on leave so this case was recently assigned to me and  
21                  I've been trying to go through the first set of discovery  
22                  that was sent.

23                  And it's significant in and of itself. The private  
24                  messaging materials that were produced are voluminous and  
25                  lengthy. And, in fact, even without a protective order,

1           trying to get those materials to Mr. Smith to review, who  
2           lives out of state, who is a six to seven hour drive from  
3           here, has been challenging.

4                   So my concern is even if we agreed on the language,  
5           per se, of a protective order, the idea that there could be  
6           some things that fall into a category of attorney possession  
7           only. My concern is that even if that were true, that those  
8           materials it designated will make it very difficult to review  
9           with Mr. Smith because of the distance and the volume of  
10           material.

11                  THE COURT: Yes. So the government is talking  
12           about multiple terabytes of information being produced.  
13           We're going to try this case in the first half of next year  
14           at the latest and I expect we'll set a trial date at the next  
15           status conference, even if it's a little bit of a ways off.

16                  In complex white collar prosecutions, especially  
17           when the defendants are not of unlimited means, one of the  
18           most important aspects, I would think, of the defense effort  
19           to prepare for trial is having the defendant him or herself,  
20           who knows the documents presumably better than any lawyer, at  
21           least to start with, spend a significant amount of time  
22           reviewing the relevant communications.

23                  And a protective order that says these materials  
24           have to be maintained in a lawyer's office and even maybe  
25           goes farther than that and says nobody can look at these

1       except the lawyer is a major, major inhibition to that  
2       critical aspect of trial prep.

3                 I don't expect -- I don't remember if the Karony  
4       protective order contains attorney's eyes only or attorney  
5       possession only provisions. If it does --

6                 MR. ENRIGHT: It does, Your Honor.

7                 THE COURT: Okay. And they apply to what?  
8       Everything?

9                 MR. ENRIGHT: No. Somewhat open ended insofar as  
10      it applies to materials that the government believes should  
11      be designated as such.

12                 THE COURT: Yeah. That doesn't work. So I'm happy  
13      to revisit the Karony protective order and I think we  
14      probably should.

15                 I think the government is -- it has a default  
16      practice of seeking protective orders that are materially  
17      over broad. And I'm being advised that I did not actually so  
18      order the Karony protective order, although it sounds like  
19      you're saying you have my signature on it.

20                 MR. ENRIGHT: My apologies, Your Honor. I thought  
21      that we did. I'm perusing right now to see if I, in fact,  
22      have it in front of me.

23                 THE COURT: Yeah, the copy that I see in my digital  
24      bench book here has signatures by both lawyers, but not one  
25      by me.

1                   MR. ENRIGHT: My apologies, Your Honor.

2                   THE COURT: So we don't need to revisit it. We  
3 just need to visit it for the first time.

4                   MR. ENRIGHT: Understood.

5                   THE COURT: I don't see us -- you know, if you're  
6 going to tell me that there are documents here that are so  
7 sensitive that not only can the defendant not have them in  
8 his or her residence, but cannot even look at them in a  
9 lawyer's office, you've going to have to provide an extremely  
10 compelling basis for that and you're going to have to define  
11 the universe of those documents with real specificity.

12                  You have -- I mean, I understand that Rule 16  
13 contemplates the possibility of protective orders, but you  
14 still have the legal obligation to produce this stuff.

15                  And so the question becomes what is good cause for  
16 purposes of Rule 16. I think there are victims all over the  
17 internet loudly proclaiming their victimization and so the  
18 mere fact that the government believes somebody has been  
19 victimized here may or may not be an adequate basis for a  
20 protective order as to that person's identity.

21                  Obviously, a Social Security number, a birth date,  
22 all that is very different. So work with not only Ms.  
23 Wozencroft, but also Mr. Schuman, and if he withdraws,  
24 whoever replaces him, to get to the bottom of this.

25                  All right. Ms. Wozencroft, was there anything else

1 other than the protective order?

2 MS. WOZENCROFT: Just that because of the volume of  
3 the materials, I think I would tend to ask for at least 60  
4 days to review everything, Your Honor.

5 THE COURT: Yeah, I want to set the next status  
6 conference for a date that is far enough out that we will  
7 have made meaningful use of the time between now and then and  
8 can make useful progress at the next status conference.

9 If both defense counsel are amenable and believe  
10 this is appropriate under the Speedy Trial Act, I might even  
11 contemplate -- I think we're looking at either the first half  
12 of March or the first half of April.

13 Mr. Schuman, what's your --

14 MR. SCHUMAN: No objection, Your Honor.

15 THE COURT: Okay. And do you believe it would be  
16 appropriate to exclude time under the Speedy Trial Act?

17 MR. SCHUMAN: Yes, no objection to the exclusion.

18 MS. WOZENCROFT: No objection either, Your Honor.

19 THE COURT: Okay. Let's look at the first half of  
20 April in that case. But even with that relatively elongated  
21 time line the government obviously should act with all  
22 alacrity to make whatever productions are going to go out.

23 MR. ENRIGHT: We will, Your Honor.

24 THE COURT: Just so everybody knows what's coming  
25 at the next status conference, I expect I will set a date --

1       a schedule for motion practice and a date for a trial and I  
2       think that will require, obviously, if there is a new lawyer  
3       for Mr. Karony, for that person to be meaningfully up to  
4       speed on what discovery looks like and what motions they may  
5       be contemplating.

6                  All right. So how about 9:30 a.m. on April 16th?

7                  MR. ENRIGHT: That works for the government, Your  
8       Honor.

9                  THE COURT: And for Mr. Schuman, in theory?

10                 MR. SCHUMAN: Yes, if I were required to attend --  
11       and obviously, I'll help facilitate any transition to new  
12       counsel as appropriate.

13                 THE COURT: Terrific. Ms. Wozencroft?

14                 MS. WOZENCROFT: No objection, Your Honor.  
15       Obviously, we would ask that the court approve Mr. Smith to  
16       travel the night before so that he could be here at 9:30 in  
17       the morning.

18                 THE COURT: Yes. Approved.

19                 MS. WOZENCROFT: We'll submit an order in writing  
20       prior to the next conference.

21                 THE COURT: Okay. All right. Does the government  
22       have an application with respect to the Speedy Trial Act?

23                 MR. ENRIGHT: Yes, Your Honor. The government  
24       would move to exclude time between today and April 16th so  
25       that it may continue to produce discovery to the defendants

1           as discussed today and to allow the parties to engage in any  
2        plea discussions.

3           THE COURT: On consent of both, or without  
4        opposition from either defendant, that application is  
5        granted. We're talking about a case that we haven't formally  
6        designated yet as complex but that bears many indicia of the  
7        complex case.

8           I don't know, is there any conversation ongoing  
9        with respect to plea disposition?

10          MR. ENRIGHT: I would say exceptionally  
11        preliminarily, Your Honor.

12          THE COURT: Okay. But not zero.

13          MR. ENRIGHT: Not zero. So that's a basis as well  
14        and we're also talking about the substitution of -- the  
15        potential substitution of counsel. As to one defendant that  
16        is a complicating factor that will require, as Mr. Schuman  
17        foreshadowed, some effort on behalf of outgoing and incoming  
18        counsel at some point, if that's the way we go.

19          And so I order the time excluded from today through  
20        April 16th, inclusive. I find that the interests of justice  
21        served by that exclusion outweigh any interest of either the  
22        parties or the general public at this point in the case.

23          Anything else from the government's side?

24          MR. ENRIGHT: No, Your Honor.

25          THE COURT: Mr. Schuman, anything else?

1 MR. ENRIGHT: No, Your Honor.

2 THE COURT: Ms. Wozencroft?

3 MS. WOZENCROFT: No, Your Honor.

4 THE COURT: All right. Thank you, all, and we'll  
5 see you in April and hear from you in the meantime?

6 MR. ENRIGHT: Thank you, Your Honor.

7 MR. SCHUMAN: Thank you.

8 MS. WOZENCROFT: Thank you.

9 (Proceedings concluded at 11:43 a.m.)

10 I, CHRISTINE FIORE, court-approved transcriber and certified  
11 electronic reporter and transcriber, certify that the  
12 foregoing is a correct transcript from the official  
13 electronic sound recording of the proceedings in the above-  
14 entitled matter.

15 *Christine Fiore*  
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17 \_\_\_\_\_ January 29, 2024

18 Christine Fiore, CERT

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